

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Case No. 8:03-CR-77-T-30TBM

v.

SAMI AMIN AL-ARIAN, et al.,

Defendants.

\_\_\_\_\_ /

**MOTION TO REQUEST CONSIDERATION OF SPECIFIC ITEMS ON  
DISCOVERY CONFERENCE AGENDA**

COMES NOW the Accused, Sami Al-Arian, by and through his undersigned counsel, and moves this Honorable Court to allow discussion of specific issues regarding discovery at the March 10<sup>th</sup>, 2004 discovery conference. As grounds for the foregoing, counsel offers the following:

1. The accused is currently confined in the Special Housing Unit at USP Coleman, Florida, where he has been since March, 2003.
2. On January 22, 2004, this Honorable Court held a discovery conference with all defense counsel present, including Mr. Jeff Campbell, counsel for USP Coleman, who appeared by telephone.
3. At that hearing Magistrate McCoun was informed of several problems with the discovery review at Coleman, including the following:
  - a) Of the 1448 CDs, converted from reel-to reel tapes, that U.S. Attorney Zitek represented to this Court had been turned over to the defense,

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actually 900 have been delivered. No CDs representing the period between February 6, 1994 through November 22, 1994 have been turned over by the government.

- b) None of the CDs from MODs pertaining to Dr. Al-Arian, as referenced in the Government's Discovery Index, have yet been given to the defense.
  - c) For a period of 6 months from August of 2003 to January 2004, only 70 hours of discovery review had been afforded the accused by Coleman prison authorities. This apparently was a result of defective listening equipment. Additionally, the prison customarily took 3 to 5 days to charge batteries for the listening devices, leaving Dr. Al-Arian without any opportunity to review discovery.
  - d) From Thanksgiving, 2003, to January, 2004, Dr. Al-Arian had been afforded a mere 11 hours of discovery review time.
  - e) At the time Dr. Al-Arian had been transported to Hillsborough County Jail to attend his scheduled hearings, the listening equipment had completely broken down.
4. In response to defense counsel's representations about the ineffective process at Coleman afforded the accused for discovery review, the Magistrate informed counsel for the prison:

"We talked about this last time, and I deferred to the – Bureau of Prisons on this because you were able to convince me that the jukeboxes were available. But I don't want months to go by –I don't even want weeks—I

don't want days to go by without the defendants having access to equipment that will work." (Transcript of January , 2004 discovery conference, page 19, lines 11-16, annexed hereto as Exhibit A).

5. Since that discovery conference, the conditions at Coleman have worsened.
6. On Saturday, February 21, 2004, counsel for the accused visited Coleman to confer with her client. At that time, Dr. Al-Arian brought into the conference room the "nomad jukebox zen xtra", the listening device. In a personal review of the audio equipment, counsel could not understand any of the CDs as they were all garbled. We were subsequently informed that software had to be purchased to "clean up" the CDs. It is unclear as of this writing if that has been accomplished.
7. From March 2, 2004 to March 5, 2004, Dr. Al-Arian was again prevented from audio discovery review because the prison authorities removed the battery from the so-called jukebox and took days to return it.
8. Approximately 590 videotapes were seized from Dr. Al-Arian's home by the federal government. The authorities at Coleman have been quite frank in informing the accused and, "off the record", defense counsel, that there will be absolutely *no* review at Coleman of these videotapes.
9. On March 4, 2004, in an apparent search of the secured housing unit ("SHU") at Coleman Prison, guards seized privileged attorney client work product, in the form of a notebook, from Dr. Al-Arian's cell. This notebook was entirely in the handwriting of Dr. Al-Arian, composed of his translations and analyses

of some of the 1995 facsimiles seized from his home, and were clearly and conspicuously marked **Attorney Client Privilege**.

10. In correspondence to Mr. Jeffrey Campbell, attorney for USP Coleman, defense counsel requested information about the seizure and the immediate return of the notebook.
11. As of the date of this writing, Dr. Al-Arian's privileged notebook remains in the hands of prison authorities.
12. Dr. Al-Arian is consistently denied phone calls to his attorneys.

WHEREFORE, because of the serious nature of these discovery issues, the accused respectfully requests this Honorable Court to allow consideration of these specific issues at the forthcoming discovery conference.

Dated: 9 March 2004

Respectfully submitted.



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1 things to happen it broke. We sent it back to the  
2 manufacturer to be repaired. Before it could be returned to  
3 us -- and it is on its way back -- they were unable to --  
4 they ran out of stock, essentially, of that particular  
5 model, so we didn't --

6 THE COURT: Mr. Campbell, let me tell you for  
7 future reference, if your jukeboxes break --

8 MR. CAMPBELL: Yes, sir.

9 THE COURT: -- then I want portable computers,  
10 laptop computers brought in the cell.

11 We talked about this last time, and I deferred to  
12 the -- to the Bureau of Prisons on this because you were  
13 able to convince me that the jukeboxes were available. But  
14 I don't want months to go by -- I don't even want weeks -- I  
15 don't want days to go by without the defendants having  
16 access to equipment that will work.

17 Now, we're purchasing some more. I'm willing to  
18 purchase some more here which I think will alleviate some of  
19 the gaps.

20 But for your information, if, in fact, these  
21 machines break down and aren't capable of doing it, then my  
22 order is that you provide them with laptop computers so that  
23 they can continue the discovery process.

24 I'm tired of fooling with this. We've got a long  
25 way to go on those tapes with regard to these defendants and

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EXHIBIT A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been

Sent via email and hand delivery this 9<sup>th</sup> day of March, 2004.

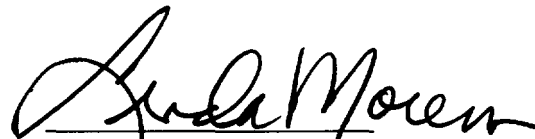
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